

REMARKS

Claims 1, 4-6, 19-23, 25-30, 33-37, 39, 40 and 43-47 remain in the application. Claims 2, 3, 7-18, 24, 31, 32, 38, 41, 42 and 48-50 were withdrawn pursuant to a restriction requirement. Claims 23 and 43 have been objected to, as being dependent on a rejected claim, but would be allowable if rewritten in independent form including all of the limitation of the base claim and intervening claim.

Claims 1 and 40 are the only independent claims being examined in the application. Independent claims 1 and 40, have now been amended to define the "elongated tube" as "collapsible." Support for the amendments is in paragraph 0070 of the application as published under U.S. Publication No. 2005/0256587. No new matter is added. The amendments are believed to place the application in form for allowance.

In the Action, claims 1 4-6, 19-22, 25-30, 33-37, 39, 40 and 44-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Stark et al's U.S. Patent Publication No. 2004/0117031 (the "'031 Publication"). The rejection was made Final. Issue is taken with that position.

In supporting the rejection, the examiner characterized the '031 Publication as disclosing "an elongated flexible tube (sleeve 14) extending between a proximal end and a distal end wherein the tube defines a central lumen (28a) within the tube; wherein the proximal end of the tube is connected to the small inner boundary of the annular element and forms a continuous passageway through a region interior to the small inner boundary." That characterization, even if accurate, cannot be applied against the rejected claims to support the rejection. While the characterization might be valid for the '031 publication, it should be noted that the '031 publication is based on U.S. Patent Application Serial No. 10/345,914 filed January 16, 2003, which is a continuation-in-part (CIP) of U.S. Patent Application Serial No. 10/118,289 filed April 8, 2002, which is a CIP of U.S. Patent Application Serial No. 09/940,110 (the "'110 Application") filed August 27, 2001, which claimed priority to U.S. Provisional Patent Application Serial No. 60/377,306 (the "'306 Application") filed May 10, 2002. Copies of certified copies of the '110 Application and the '306 Application are attached as Exhibits A and B, respectively.

The subject application is a §371 application drawn from PCT Application No. PCT/US03/14885, filed May 9, 2003, which is based on U.S. Provisional Application Serial No. 60/379,160, filed May 9, 2002.

Of the applications upon which cited the '031 Publication is based, ONLY THE '306 APPLICATION predates the applicant's effective filing date May 9, 2002. The '306 Application does not teach or suggest the "elongated flexible tube (sleeve 14)" upon which the examiner based the §103 rejection, citing the '031 Publication. The basis in the '031 Publication for the "elongated Flexible tube (sleeve 14)" was not introduced by Stack until the '306 Application, which was not filed until after the applicant's effective filing date. For this reason, the Examiner's reliance on the '031 Publication for rejection of applicant's claims is not proper, as the '031 Publication is not effective prior art for the stated basis. Moreover, independent claims 1 and 40 have now been amended to define the tube as being "collapsible." There is no teaching or suggestion in the '110 Application of such a feature. Accordingly, there is no proper basis for the §103 rejection. That rejection should be reconsidered and withdrawn.

CONCLUSION

For the above reasons set forth above, there is no proper basis for the §103 rejection of independent claims 1 and 40, or all claims depending therefrom, including the previously withdrawn claims. All claims 1-47 are believed to be in condition for allowance. Passage to issue is requested.

The Commissioner is hereby authorized to charge any fees which may be required regarding this application under 37 C.F.R. §1.16-1.17, or credit any overpayment, to Deposit Account No. 50-3431. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-3431. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-3431.

Respectfully submitted,
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